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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/850,341	05/07/2001	Steven B. Dawes	SP01-120	2308

7590 06/18/2003  
Svetlana Short  
Corning Incorporated, SP-TI-3-1  
Corning, NY 14831

EXAMINER

WONG, ERIC K

ART UNIT PAPER NUMBER

2874

DATE MAILED: 06/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/850,341

Applicant(s)

DAWES ET AL.

Examiner

Eric Wong

Art Unit

2874

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 7-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 7, 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent Number 6,304,687 to Inoue et al.

As to claim 7, Inoue discloses in figure 37A, a waveguide device comprising:

- At least a pair of waveguides
- Another waveguide connecting the pair with  $dn/dt$  of  $-2e-4/\text{degreesC}$  to  $-4e-4/\text{degrees C}$  (Column 10, Line 6)

3. As to claim 9, figure 18 discloses a trapezoidal gap.

4. As to claim 10, column 2, lines 8-13 disclose a temperature coefficient as claimed.

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5. As to claim 11, the gap separation is 5um to 100um (Column 10, lines 3 and 45).
6. Claims 7, 9, 10 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by United States Patent Application Publication 2002/0122623 to Yoneda.

Yoneda discloses an athermal silica based waveguide device providing a plurality of optical signals each corresponding to a port comprising:

- At least a pair of waveguides coupled to each other separated by a gap of about 2 micrometers to about 500 micrometers (Figure 6), said waveguides having a thermal coefficient larger than 0.0/Degrees Celsius (Paragraph 73)
- Another waveguide connecting said pair of waveguides having a thermal coefficient between  $-2 \times 10^{-4}$  / Celsius to  $-4 \times 10^{-4}$  / Celsius (Paragraph 73)

As to claim 9, Yoneda discloses a trapezoidal gap (Figure 3).

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yoneda as applied to claim 1 above.

Yoneda discloses an optical waveguide device as described in claim 7, but fails to explicitly disclose said waveguides being optical fibers.

It is well known in the art to use optical fibers as waveguides for their simplicity and cost benefits.

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It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify Yoneda to include waveguides made of optical fiber for simplicity, cost and transmission benefits.

### ***Response to Arguments***

1. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Yoneda reference. The affidavit is insufficient as it fails to disclose the practice of the invention in this country or a NAFTA or WTO member country. The rejections based on Yoneda still apply from the previous office action.
2. In response to the arguments for claim 8, the examiner finds this argument persuasive, but the claim is still objected to because it depends on a rejected base claim.
3. In response to the statement that examiner incorrectly referenced claim 1 instead of claim 7, the assumption is correct.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Wong whose telephone number is 703-305-4741. The examiner can normally be reached on Monday through Friday, 830AM - 430PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney Bovernick can be reached on 703-308-4819. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7724 for regular communications and 703-308-7724 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

EW

June 9, 2003



HEMANG SANGHAVI  
PRIMARY EXAMINER